

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

BILLY CARTER,

Defendant and Appellant.

B267740

(Los Angeles County  
Super. Ct. No. MA066064)

APPEAL from the judgment of the Superior Court of Los Angeles County. Lisa Mangay Chung, Judge. Affirmed as modified.

\_\_\_\_\_  
Tracy L. Emblem, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Scott A. Taryle, and Eric J. Kohm, Deputy Attorneys General, for Plaintiff and Respondent.

\_\_\_\_\_

Appellant Billy Carter appeals from the judgment entered on his convictions of criminal threats and assault with a deadly weapon. Specifically, he complains that the trial court erred by failing to apply Penal Code section 654<sup>1</sup> at sentencing. We agree. Because the evidence in the record demonstrates that appellant's convictions arose from a continuous course of criminal conduct and that the offenses were incidental to one objective—to harm or kill the victim, the court erred in failing to stay appellant's sentence for the assault conviction. We modify the judgment accordingly and otherwise affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

Appellant rented a small apartment from David Langaard, who lived with his family in a home on the same property. On the morning of May 17, 2015, appellant locked himself out of his apartment. Appellant asked Langaard for another key to open the door, but Langaard refused, instructing appellant to call a locksmith. Langaard then left for the day with his family, and while he was away, appellant called the police to report that his landlord had locked him out of his rental unit. After the officer arrived, appellant crawled through the “doggie door” of his apartment, retrieved the key and opened the door. The officer left, believing he had resolved the matter.

Later that same day, however, between 7:30 p.m. and 8:30 p.m., Langaard and his wife walked to the back of the property to the garage. When Langaard stopped to unlock the garage door, he saw appellant “off to the side of [him].” Appellant, who, at the time was only about an arm's length away from Langaard, swung a knife towards Langaard's neck. Langaard “jerked back” to avoid the knife blade, and appellant immediately said, “I am going to cut your f[uck]ing throat.” Langaard and his wife ran back to their home and remained inside with the doors locked until the next day when they reported the altercation to the police.

---

<sup>1</sup> All statutory references are to the Penal Code unless otherwise indicated.

Appellant was arrested and charged with criminal threats (count 1; § 422, subd. (a)); assault with a deadly weapon (count 2; § 245, subd. (a)(1)); and elder abuse<sup>2</sup> (count 3; § 368, subd. (b)(1)). Count 1 also alleged that appellant used a deadly weapon (§ 12022, subd. (b)(2)). Appellant pleaded not guilty. A jury convicted appellant of criminal threats and assault with a deadly weapon.<sup>3</sup> The jury further found the weapon allegation true.

The trial court sentenced appellant to three years in state prison. The court chose count 1, criminal threats, as the base term and imposed a mid-term sentence of two years, plus a one-year term for the section 12022, subdivision (b)(1) enhancement. In addition, the court sentenced appellant to a concurrent term of two years for the assault with a deadly weapon. Although the court acknowledged that the criminal threat and the assault involved the “same set of facts,” it rejected appellant’s request that the court stay the sentence under section 654.<sup>4</sup>

Appellant timely appeals.

---

<sup>2</sup> Langaard was 70 years old at the time of the incident.

<sup>3</sup> The jury found him not guilty of elder abuse.

<sup>4</sup> The court also imposed various fines, awarded appellant 321 days of custody credits, and found appellant in violation of his probation on a prior domestic violence misdemeanor conviction.

## DISCUSSION

Under section 654, “[a]n act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision.” (§ 654.) The statute thus prohibits punishment for two crimes arising from a single, indivisible course of conduct. (*People v. Latimer* (1993) 5 Cal.4th 1203, 1208.) Whether a course of criminal conduct is divisible and therefore gives rise to more than one act within the meaning of section 654 depends on the intent and objective of the actor. (*People v. McKinzie* (2012) 54 Cal.4th 1302, 1368, overruled on other grounds in *People v. Scott* (2015) 61 Cal.4th 363, 391.) If the offenses were merely incidental to each other or were the means of accomplishing or facilitating one objective, the defendant may be found to have harbored a single intent and therefore may be punished only once. In contrast, if the defendant entertained multiple criminal objectives which were independent of and not merely incidental to each other, he or she may be punished for all of the violations committed in pursuit of each objective even though the violations shared common acts or were parts of an otherwise indivisible course of conduct. (*People v. Latimer, supra*, 5 Cal.4th at p. 1208; *People v. Centers* (1999) 73 Cal.App.4th 84, 98.)

Here, appellant’s assault on Langaard and the threat to cut his throat occurred in rapid succession during one continuous course of conduct—appellant swung the knife, and as Langaard reacted to evade the assault, appellant uttered the threat. Even the trial court acknowledged the offenses arose from the same facts. The issue thus is whether appellant harbored separate criminal objectives when he committed the crimes. Nothing in the record suggests that while appellant was committing these acts, he intended something different with each one. Instead, the evidence in the record demonstrates that one primary criminal objective motivated the crimes—appellant intended to harm or kill Langaard when he swung the knife, and the statement—“I am going to cut your f[uck]ing throat”—was an unequivocal expression of that objective. We, thus, conclude that the

criminal threat was incidental to the assault and that the court, therefore, erred in failing to stay his sentence for the assault conviction.<sup>5</sup>

### DISPOSITION

The judgment is modified to stay the sentence on the assault conviction in count 2 pursuant to Penal Code section 654. The superior court is directed to prepare an amended abstract of judgment incorporating this modification and to forward it the California Department of Corrections. As modified the judgment is affirmed.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

CHANEY, J.

LUI, J.

---

<sup>5</sup> In reaching this conclusion we reject appellant's argument that the court should have stayed the sentences for the criminal threat conviction and weapon enhancement in count 1. Section 654 requires the court to impose sentence on the crime with the *longest potential sentence*, and to stay imposition of sentence for other crimes to which the statute applies. (*People v. Kramer* (2002) 29 Cal.4th 720, 722.) In determining which offense carries the longest potential sentence, the court examines the possible statutory maximum for each offense including any enhancement found for the offense. (*Id.* at p. 723.) Here, the criminal threat conviction, section 422, carried a maximum three-year prison term, and the enhancement for that conviction, section 12022, subdivision (b)(2), carried a three-year maximum term, making the total potential term for that count six years. In contrast, the assault count, section 245, carried a maximum of a four-year term. Consequently, in applying section 654, the court should impose the sentence on the criminal threats conviction (plus the enhancement) and stay the sentence as to the assault.